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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

LOREN E. CLONINGER et al.,

Plaintiffs and Appellants,

v.

ELLA L. MORAN, as Co-trustee, etc.,
et al.,

Defendants and Appellants.

H036473

(Monterey County
Super. Ct. No. M83258)

This partition action concerns the physical division of two ranches in Monterey County jointly owned by the descendants of the Pedrazzi brothers. Appellants (defendants below) are the descendants of Paul Pedrazzi. They own an undivided one-third interest in the ranches. Respondents and cross-appellants (plaintiffs below) are the descendants of Alfred and Enos Pedrazzi. They own the remaining undivided two-thirds interest in the property. Pursuant to the parties' stipulation and in accordance with Code of Civil Procedure section¹ 873.010 et seq., the trial court appointed a referee to assist with the division of the properties. After inspecting the ranches and conducting a five-day trial, the referee issued two reports recommending a specific, physical division of the ranch properties. The plaintiffs subsequently made a motion to confirm the referee's reports and asked the court to conduct a hearing on their claim for reimbursement of a

¹ All further statutory references are to the Code of Civil Procedure.

portion of the property taxes they had paid on the properties. The trial court confirmed the referee's reports and recommendation, denied the plaintiffs' request for reimbursement of back taxes, ordered each side to pay its proportionate share of any future tax liability, and entered an interlocutory judgment of partition.

On appeal, defendants contend that there was insufficient evidence to support the award of one of the ranch houses to plaintiffs, that the referee's award of a recreational easement is illusory, that the legal description of the division of some of the farmland is insufficient, that the partition fails to comply with land use regulations, and that there is insufficient evidence to support some of the court's findings regarding property values. In their cross-appeal, plaintiffs challenge the court's ruling on their motion for reimbursement of the property taxes. We find no abuse of discretion and will therefore affirm the interlocutory judgment of partition.

FACTS²

Starting in the 1880's, Swiss immigrants Pietro and Agostina Pedrazzi acquired several parcels of land in Monterey County. The properties, which are described in greater detail below, consist of approximately 3,200 acres on two separate ranches with irrigated farm land for row crops, grazing land, undeveloped land, hill ground, three houses, six barns, and other structures. Pietro died in 1920. After Agostina's death in 1964, the properties passed to her three surviving sons: Alfred ("Spike") Pedrazzi, Enos Pedrazzi, and Paul Pedrazzi as tenants in common. Consequently, each son owned an undivided, one-third interest in the properties.

² The facts are based on the parties' joint statement of facts, the referee's findings in his initial and supplemental reports, and the exhibits submitted to the referee.

The Parties

The parties to this action are the descendants of Alfred, Enos, and Paul Pedrazzi and limited partnerships owned by the descendants. The descendants have appeared either as individuals or in their capacities as trustees of several trusts.

The plaintiffs (respondents on appeal) are the grandchildren of Alfred Pedrazzi and Enos Pedrazzi. They include Loren Cloninger, Debra Short, James Pedrazzi, David Pedrazzi, and Sandra Zuck.³ Pedrazzi Farm Lands and Pedrazzi Hill Ranch are also named plaintiffs.⁴ The plaintiffs own an undivided two-thirds interest in the properties. We shall hereafter refer to them jointly as "Plaintiffs."

The defendants (appellants on appeal) are the children of Paul Pedrazzi. They include Ella Moran, Milton Pedrazzi, and Robert Pedrazzi. They have been sued in their capacities as co-trustees of two different trusts.⁵ The defendants own an undivided one-third interest in the properties. We shall hereafter refer to them jointly as "Defendants." And for ease of reference, and meaning no disrespect, we shall hereafter refer to the parties and their family members individually by their first names.

The Properties

This partition action involves two separate agricultural properties known as the Pedrazzi Home Ranch (Home Ranch) and the Corey Ranch, both of which are located

³ Debra Short has sued in her capacity as "Trustee of the Maxine Norma Andersen Revocable Trust" dated January 6, 1993. Maxine Andersen was the daughter of Enos Pedrazzi. James Pedrazzi and David Pedrazzi have sued as "Co-Trustees of the Generation Skipping Exemption Trust under the 1990 Agnes Pedrazzi Revocable Trust" dated April 6, 1990. Agnes Pedrazzi was the wife of Alfred Pedrazzi.

⁴ The entity plaintiffs are limited partnerships. The limited partners are David Pedrazzi, his parents Peter and Trudy Pedrazzi, and his brother James Pedrazzi.

⁵ The defendants have been sued as co-trustees of both the "Exempt Trust" and the "Non-Exempt Trust" under the 1990 Paul V. Pedrazzi Revocable Trust, both dated November 21, 1990. The Estate of Paul V. Pedrazzi was also named as a defendant but was dismissed in June 2008.

along River Road in the Salinas Valley, west of Chualar. An unrelated third party owns the property between the two ranches.

The Corey Ranch consists of two separate areas that straddle River Road, which the parties refer to as the Corey Ranch Farmland (Corey Farmland) and the Corey Ranch Hills (Corey Hills). The Corey Farmland is on the east side of River Road and consists of approximately 404 acres (294.62 acres of irrigated row crop land, 69.4 acres of river and river bank, and 40 acres that are not cultivated because of their exposure to flood risk). For many years, the Corey Farmland has been leased to third parties. During the litigation below, it was leased to Bengard Farms (Bengard).

The Corey Hills property is located across River Road from the Corey Farmland. It consists of approximately 537.5 acres of "bench ground"⁶ that has historically been used for grazing cattle.

The Home Ranch is located south of the Corey Ranch. For the purposes of this litigation, it consists of four distinct areas that straddle River Road, which the parties refer to as the Home Ranch Farmland (Home Farmland), the Home Ranch Lower Hills (Lower Hills), Home Ranch Upper Hills (Upper Hills), and the Paul Pedrazzi Home and Bull Field.

The Home Farmland consists of approximately 175 acres of irrigated farmland on the east side of River Road that are used to grow row crops, plus approximately 60 acres of "undeveloped flood plain or river and banks." David and his family have "exclusively" farmed the Home Farmland since the early 1980's pursuant to an oral agreement with Defendants. At the time of the litigation, David farmed this property under the fictitious business name "Pedrazzi Farms." David and his wife also owned two

⁶ The parties refer to some of the hillside land and land in the flood plains or river banks as "bench land." In this sense, "bench" means a "terrace, shelf: as: a: an area of level or gently sloping land with steep slopes above and below formed by differential erosion" or "b: a former wave-cut shore of a . . . floodplain of a river." (Webster's 3d New Internat. Dict. (1993) p. 202.)

parcels (approximately 30 acres) that were "enveloped within" the Home Farmland property and were farmed by Pedrazzi Farms. The issues in the partition action included the fair market value of the rent David paid Defendants for their interest in the Home Farmland.

The Paul Pedrazzi Home (Paul's House) and Bull Field consist of three lots on 11.4 acres on the east side of River Road, which are bounded on three sides by Home Farmland. One of the lots (a 0.86-acre parcel) contains a small (1,275 square foot, two-bedroom, one-bath) house. Defendants claimed this house as their ancestral home. Defendants' parents moved into the house with Ella and Robert in 1938; lived there when Milton was born; and continued to live there after their children were grown until 1996, when the last surviving parent (Paul) died. After their father died, Defendants rented the house to a cousin for a few months and to an unrelated couple for three years. In 2000, Ella's son Michael Moran moved into Paul's House and continued to live there until at least 2010.

Defendants claimed they were the sole owners of Paul's House by adverse possession or ouster. None of the Defendants has lived in Paul's House for years; none of them expressed any intention of ever living there again. Ella, the head of human resources for a manufacturing company, lives in Salinas; Robert, who has "only an income right in subject the properties," lives in Florida; and Milton, a dentist, works in San Jose and lives in Pleasanton. The Bull Field is enclosed pasture land, where the parties' predecessors bred bulls, adjacent to Paul's House and the Home Farmland. There are two structures on the Bull Field: a barn and an old farm labor house.

The Lower Hills consists of 378.19 acres of bench ground contiguous to, but across River Road from, the Home Farmland. There are two houses and several buildings on the Lower Hills. The first house was the residence of Agostina and Pietro beginning in 1910. Later, Enos and his family lived there. The house was abandoned in 1973 and remained unoccupied for 27 years. In 2000, Loren took possession of the house

and spent approximately \$650,000 of his own money to reconstruct and remodel it. It is currently 3,126 square feet in size, with five bedrooms and three baths, plus a 548-square-foot basement, a bunkhouse, and a garage. The house (hereafter Loren's House) has been Loren's primary residence since 2002. Loren was a farmer in the Salinas Valley for more than 30 years, doing business as A&C Farms in partnership with his cousin, Richard Andersen (Debra's brother).

The second house on the Lower Hills is "Spike's House," a 1,238 square-foot, three-bedroom, one-bath house that was built in the 1920's, where Spike and his family lived. This house has been a rental for a number of years; the interior was remodeled in 2004. Other buildings on the Lower Hills included a cattle barn, a horse barn, a milking barn, a workshop, and an implement shed.

The Upper Hills consists of 1,655 acres of hill ground that extends to the top of the Sierra de Salinas range. There are two satellite communications towers on the property, which the parties have leased for income. David owns a large parcel of land adjacent to the Upper Hills.

The parties "historically operated under an arrangement whereby each group occupied separate portions of the grazing land on the two ranches . . . on a rent free basis." Defendants used Corey Hills to graze cattle while Plaintiffs shared the grazing land on the Upper Hills and the Lower Hills.

PROCEDURAL HISTORY

Pleadings and Appraisals

In 2007, Plaintiffs filed a complaint containing a single cause of action for partition, requesting that the property be partitioned in kind. When Defendants answered, they asserted that they were the sole owners of Paul's House and requested a judgment partitioning the property by sale, rather than in kind.

The record suggests that the parties attempted to resolve the issues between them before filing suit by some sort of property exchange. Plaintiffs had the properties appraised by John Piini in January 2004 (before filing suit). Defendants obtained appraisals from R. Anthony Brigantino in July 2008 (after they filed their answer).

Appointment of Referee

In October 2008, the court entered an interlocutory judgment pursuant to the stipulation of the parties, in which it ordered that the properties be partitioned and that a referee be appointed to accomplish the partition. Selection of the referee was stayed to permit the parties to attempt to resolve their differences by mediation. Apparently, the mediation failed. In January 2009, pursuant to a stipulation of the parties, the court appointed attorney James Cook as referee.

Discovery and Trial

The parties conducted discovery, which included a site visit by the referee. In June 2009, the referee conducted a four-day trial, which included the testimony of the parties, real estate appraisers, a surveyor, and third-party witnesses. At trial, Plaintiffs stipulated that their two-thirds interest in the properties would "be awarded to them en mass subject to further agreements within the Plaintiff group as to the division of that property." Defendants made a similar stipulation regarding their one-third interest in the properties. Each side submitted pre-trial, closing, and rebuttal briefs, which included their proposals for partition of the property. At the referee's request, Plaintiffs submitted an alternative proposal that included awarding Paul's House to Defendants.

Referee's Initial Report and Recommendations

On July 22, 2009, the referee issued his initial report and recommendation. He found the Home Farmland was worth \$6,565,125 (\$37,500 per acre); the Upper Hills

were worth \$1,985,000; and the Lower Hills were worth \$2,650,000. He recommended that the Home Farmland, the Lower Hills, the Upper Hills, Paul's House, and the Bull Field be awarded to Plaintiffs.

The referee found that Defendants' testimony that they had an emotional attachment to the Upper Hills was compelling and recommended that Defendants be awarded an easement in gross on the Upper Hills for recreational purposes. The easement was to be "personal to Defendants and not to be transferred to any third party, nor bequeathed to any third party." Use of the easement was "limited to [Defendants] and their guests," and one of the Defendants must be present when their guests use the easement. The report provided that if Plaintiffs asserted that the easement in gross lessened the value of the Upper Hills, then they could submit evidence on the issue.

The referee found that Paul's House and the Bull Field needed to be reappraised and recommended that the appraisers collaborate and "attempt to reach an agreed upon number." The referee recommended that the Corey Farmland and the Corey Hills each be divided to award Defendants their one-third interest in the properties, with the western end of each divided property going to Defendants. The referee found that the Corey Farmland was worth \$40,000 per acre and the Corey Hills was worth \$3.5 million. He reported that post-trial, Defendants had proposed that the division of the Corey Farmland be offset against the value of the Home Farmland. To determine whether that was viable, the referee recommended that the parties survey the Home Farmland to determine its exact acreage and submit proposals for division of the Corey Farmland that considered the location of existing wells and any water agreements that might be necessary. Regarding the Corey Hills, the referee found that the property's value varied from acre to acre based on suitability for pasture land, ingress and egress, and water issues. He recommended the appraisers collaborate on property valuations and asked the parties to submit proposed divisions of the Corey Hills.

The parties had asked the referee to resolve issues related to rent allegedly due from Loren for the use of Loren's House and from David for use of the Home Farmland. The referee made recommendations regarding the resolution of those issues, which are not at issue on appeal. Finally, the parties asked the referee to make findings related to the division of equipment and personal property stored on the ranches. The referee directed the parties to inventory the personal property and attempt to reach an agreement regarding the division of that property.

After the referee announced that he was awarding Paul's House and the Bull Field to the Plaintiffs, Defendants filed a motion asking the referee to reconsider that decision, which was denied.⁷

Post-Trial Proceedings and Referee's Supplemental Report

The referee conducted another hearing on January 11, 2010, at which he heard further testimony and received additional documentary evidence. Thereafter, the parties submitted further briefs and evidence and participated in five conference calls with the referee.

The referee filed a supplemental report on May 14, 2010, in which he recommended that the Corey Hills be divided as set forth in Defendants' Exhibit 28, with Plaintiffs receiving 142.35 acres at the east end of the property and Defendants receiving 395.15 acres on the west end. Since the only well was on Defendants' side of the property, the referee recommended that Plaintiffs be given access and joint use of the well for one year after recording the deed dividing the property, until they developed their own water source.

The referee addressed three points of contention regarding the Corey Farmland. The first involved a 6.7-acre area on the west end of the property, which is separated

⁷ That motion is not in the record on appeal.

from the rest of the property by a drainage ditch, which the parties call the "encroachment area." The referee recommended that it be valued at \$8,000 per acre, one-fifth the value of the rest of the Corey Farmland. The referee recommended that the irrigated farmland on the property be divided according to the Plaintiffs' proposal in their Exhibit 30, with Defendants receiving wells Nos. 1 and 2 and Plaintiffs receiving well No. 3, and that the bench land portion be divided according to the proposal in Plaintiffs' Exhibit 33, with certain modifications.

The referee observed that the parties had stipulated to the disposition of over 100 items of personal property and made orders regarding the few items that remained disputed. The parties had also asked the referee to rule on Plaintiffs' request that Defendants reimburse them for property taxes they had paid. The referee ruled that there was insufficient evidence for him to make a recommendation on the taxes, but that Plaintiffs were not barred from raising this claim in another proceeding.

Motions to Confirm Referee's Report and Award Property Taxes

In June 2010, Plaintiffs filed (1) a motion to confirm the referee's reports; and (2) a status conference statement in which they asked the court to conduct a hearing on the unpaid taxes and apportionment of future tax liability pending completion of the partition. In response, the court scheduled a hearing on a motion regarding the taxes for the same day as the motion to confirm.

The day before their opposition was due, Defendants filed a substitution of attorneys. But their new counsel stated that he had been involved in the proceedings since August 2009.

Defendants opposed the motion to confirm the referee's report. They were "very unhappy" that they had been "excluded" from the Home Ranch and were "sentenced to live" in the west end of the Corey Ranch. They argued that forced sales are disfavored, that the referee's recommendation amounted to a forced sale of their interest in the Home

Ranch, that the two ranches were not similar, and that they were raised on the Home Ranch and used its hills for hunting and picnicking. They proposed a modification that retained the referee's division of the farmlands (the Home Farmland, the Corey Farmland, Paul's House, and the Bull Field) but altered the division of the hillside properties. They recommended that the court give Plaintiffs all of the Corey Hills, two-thirds of the Upper Hills, and the 40-acre parcel⁸ in the Lower Hills where Loren's House is located and that the remaining hillside property go to Defendants. They argued that under their proposal, each side would receive part of the Home Ranch and part of the Corey Ranch. They objected to the referee's finding that the encroachment area was worth \$8,000 per acre, asserting that it had no value, and they argued that the wells that were allocated to them on the Corey Farmland were inadequate. They argued that the property tax issue was not properly before the court because it was not briefed in the motion to confirm. They urged the court to set aside the referee's recommendation, conduct its own investigation, and partition each "parcel" separately in kind, or where partition in kind was not feasible, order the properties sold.

The parties did not submit a reporter's transcript of the five days of testimony before the referee to the trial court, except for excerpts from Ella's and David's testimony regarding the taxes. Consequently, most of the record of the proceedings before the referee was not before the trial court and is not in the record on appeal. The parties did provide the trial court with the four binders of exhibits that were before the referee and those exhibits are part of the record on appeal.

In reply, Plaintiffs argued that the referee's conclusions were entitled to a presumption of validity since (1) they were based on the credibility of the witnesses, (2) a "mountain of evidence" supported the referee's conclusions, and (3) defendants could not attack the sufficiency of the evidence because they had failed to provide the court with a

⁸ Most of the property at issue is zoned for minimum 40-acre parcels.

reporter's transcript. Plaintiffs also submitted additional evidence on the property tax issue.

Hearings on Motions and Trial Court's Order

The trial court conducted two hearings on the motions. At the first hearing, it announced a tentative ruling (which is not in the record), heard argument, set the matter for further hearing with the referee present to determine whether the referee's findings were fair, and continued the motion on the taxes to allow Defendants additional time to respond. At the second hearing, the court questioned the referee, heard additional argument, and took testimony related to the taxes.

In August 2010, the court issued an order confirming the referee's reports. The court noted that the referee took testimony from the witnesses, evaluated their credibility, and inspected the properties. Regarding the allocation of the wells, the court found that the referee's recommendation was based on substantial evidence (the testimony of Lino Finati, who had farmed the Corey Farmland for years, which the referee found credible). The court stated, "[H]aving seen the properties, the referee was in a position to evaluate, with the assistance of the parties' respective appraisers, the economic and practical consequences of division of the property. The court is quite satisfied that the referee understood not only the property in question, but the parties and their family history as well, and that he favored neither side." The court observed that Defendants had agreed that the property allocated to them was "1/3 in both size and value" and found that the division recommended by the referee was "fair and equitable and practical."

As for the property taxes, the court (1) denied Plaintiffs' claim for reimbursement of a portion of a supplemental tax bill on the Corey Farmland and held that it was Debra's responsibility; (2) denied Plaintiffs' claim for reimbursement of \$25,229.44 in past taxes paid on the hillside properties; and (3) ordered that all taxes incurred from the date of the

decision "shall be borne by the parties in proportion to their respective shares, up to the time that the deed dividing the property is recorded."

In October 2010, the court entered a second interlocutory judgment in accordance with its order on the motions and reserved jurisdiction "to resolve further issues and disputes that may arise in completion of the partition." Defendants appeal. Plaintiffs have filed a cross appeal challenging the court's ruling on the property taxes.

DISCUSSION

General Principles Regarding Partition Actions

The term "partition" means " 'the procedure for segregating and terminating common interests in the same parcel of property.' " (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1404-1405.) The statutes governing partition are found at section 872.010 et seq. "[A]lthough the action of partition is of statutory origin in this state, it is nonetheless an equitable proceeding." (*Elbert, Ltd. v. Federated Income Properties* (1953) 120 Cal.App.2d 194, 200.)

The trial court may appoint a referee "to divide or sell the property as ordered by the court" (§ 873.010, subd. (a)). Section 873.210 provides that "[t]he referee appointed by the court to make a division of the property shall divide the property and allot the several portions to the parties, quality and quantity relatively considered, according to their interests in the property as determined in the interlocutory judgment." Thus, "[q]uality and quantity are to be considered in the allotments by the referee but the determinative factor is that each party shall receive an allotment equal to his [or her] interest in the whole of the property." (*Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745, 760 (*Richmond*)). At the hearing to confirm the referee's award, Defendants' counsel told the trial court that if one considered the property as a whole, Defendants

received one-third of the appraised value of the total, and approximately one-third of the property on the east side of River Road, and one-third of the property on the west side of the road.

"As a rule, the law favors partition in kind, since this does not disturb the existing form of inheritance or compel a person to sell his property against his will. Forced sales are strongly disfavored." (*Richmond, supra*, 105 Cal.App.3d at p. 757.)

Although the report and recommendation of the referee are advisory, the referee "clearly serves as the initial examiner of the facts, and perhaps the law, in a partition action, under the aegis of the appointing court. The referee's determinations are either accepted by the court, modified, or set aside. (§ 873.290, subd. (b).)" (*Gray v. Superior Court* (1997) 52 Cal.App.4th 165, 171.) Confirmation of the referee's report and recommendation constitutes an adoption of the facts found by the referee. (*Worcester v. Worcester* (1966) 246 Cal.App.2d 56, 61.)

"If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition." (§ 872.720, subd. (a).) An interlocutory judgment of partition is appealable pursuant to section 904.1, subdivision (a)(9).

The Standard of Review

A partition suit is in equity and a court of equity has broad powers and comparatively unlimited discretion to do equity without being bound by strict rules of procedure. (*Richmond, supra*, 105 Cal.App.3d at p. 745.)

The standard of review for an interlocutory judgment of partition is abuse of discretion. (*Capuccio v. Caire* (1929) 207 Cal. 200, 211 (*Capuccio*), superseded by statute on another ground as stated in *Lin v. Jeng* (2012) 203 Cal.App.4th 1008, 1024;

Camicia v. Camicia (1944) 65 Cal.App.2d 487, 490 (*Camicia*.) Whether the referee could have made "in certain respects a more just and equitable division of certain portions" of the property to be partitioned is a question of fact to be decided by the trial court upon review of the report of the referee. (*Capuccio, supra*, 207 Cal. at p. 211.) Thus, if the evidence conflicts, the findings of the trial court will be "taken as conclusive where . . . there is sufficient evidence to sustain them." (*Camicia, supra*, 65 Cal.App.2d at p. 490; *Felder v. Felder* (1967) 247 Cal.App.2d 718, 724.)

Where the sufficiency of the evidence is challenged on appeal, "the reviewing court must start with the presumption that the record contains evidence sufficient to support the judgment; it is appellant's burden to demonstrate otherwise." (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 368.) "Under that standard, we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment. [Citations.]" (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630 (*Howard*.) "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment." (*Id.* at pp. 630-631.)

"We emphasize that the test is *not* the presence or absence of a substantial conflict in the evidence. Rather, it is simply whether there is substantial evidence in favor of the respondent. If this 'substantial' evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld. . . . [Citations.]" (*Howard, supra*, 72 Cal.App.4th at p. 631.) "In short, even if the judgment of the trial court is against the weight of the evidence, we are bound to uphold it so long as the record is free from prejudicial error and the judgment is supported by evidence which is 'substantial,' that is, of 'ponderable legal significance,' 'reasonable in nature, credible, and of solid value" [Citations.]" (*Ibid.*)

APPEAL

Defendants argue that in partitioning the property, "the court and referee gave no regard for the defendants' historical use of the parcels," and that the partition was not specific as to the boundary lines of certain blocks of land. The argument portion of their brief contains three sections, with argument concerning (1) Paul's House, (2) the Upper Hills and Lower Hills, and (3) "other discrepancies" that allegedly demonstrate that the court abused its discretion. We shall address Defendants' contentions in that order.

Paul's House

Citing *Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360 and *Richmond, supra*, 105 Cal.App.3d 745, Defendants argue that although it was proper for the referee to consider Loren's historical use of the Lower Hills and Pedrazzi Farms Lands' historical use of the Home Farmland, the referee and the court abused their discretion when they treated Defendants "*unequally*" and "ignored" their historical use of Paul's House. They assert that the "referee and the court accomplished this by demonizing Michael Moran based on no evidence whatsoever" and "thus acted arbitrarily and capriciously."

We begin by addressing two problems that limit our review of the issues related to Paul's House and other issues on appeal: (1) forfeiture and (2) an incomplete record on appeal.

A. Forfeiture

"[T]o preserve an issue for appeal, a party ordinarily must raise the objection in the trial court.' [Citation.] 'The party also must cite to the record showing exactly where the objection was made.' [Citation.] As the California Supreme Court recently reaffirmed, 'a reviewing court ordinarily will not consider a challenge to a ruling if an

objection could have been but was not made in the trial court.' [Citation.] 'The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.' " (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 948-949 (*K.C.*), citing *In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

Appellants may waive a claim of error by affirmative conduct or forfeit it by failing to take proper steps in the trial court to avoid or cure the error. (*K.C.*, at p. 950; *Telles Transport, Inc. v. Workers' Comp. Appeals Board* (2001) 92 Cal.App.4th 1159, 1167.) "[F]airness is at the heart of a waiver claim. Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. [Citation.] In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack. [Citation.] Bait and switch on appeal not only subjects the parties to avoidable expense, but also wreaks havoc on a judicial system too burdened to retry cases on theories that could have been raised earlier." (*JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 178.)

In their opposition to the motion to confirm the referee's report, Defendants complained generally that they had been excluded from every portion of the Home Ranch. They proposed a modification that retained the referee's division of the Corey Farmland, the Home Farmland, Paul's House, and the Bull Field, but altered the division of the hillside properties. They expressly stated that under their proposal, all of the Home Ranch property on the east side of the road, including Paul's House, would go to Plaintiffs. Their primary concern was the division of the hills on the Home Ranch; they also raised objections related to the Corey Farmland. Thus, Defendants' written opposition in the trial court did not assert error in awarding Paul's House to Plaintiffs.

At the hearing on the motion to confirm, the referee answered the court's questions regarding Paul's House, and he stated that after reading the opposition papers, he did not

think that was the main issue in the case. Defendants did not disagree. Later in the proceedings, Defendants' counsel told the court that Defendants objected to being excluded from Paul's House. Referring to the entire Home Ranch, he also argued that the referee had not taken into consideration the "sentimental historical inheritance values that parties give to particular parcels."

This record raises a serious question whether Defendants have preserved their claim that the referee and trial court abused their discretion when they awarded Paul's House to Plaintiffs. But the claim that the judgment is not supported by substantial evidence is an exception to the general rule that points not urged in the trial court cannot be raised on appeal. (*Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17.) Consequently, we shall review Defendants' contentions to the extent that they raise the sufficiency of the evidence to support the award of Paul's House to Plaintiffs.

B. Adequacy of the Record

Although we have the reporter's transcript of the second hearing on the motion to confirm and the exhibits that were presented to the referee and the trial court, we do not have the transcripts of the five-day trial before the referee or any of the briefs the parties filed with the referee. Thus, we do not have the entire record of the proceedings before the trier of fact.

One of the most fundamental rules of appellate review is that an appealed judgment or order is presumed to be correct. " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' . . ." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Appellants (Defendants on the appeal and Plaintiffs on the cross-appeal) have the burden of overcoming the presumption of correctness. For this purpose, they must provide this court with an adequate record demonstrating the alleged error. Failure to provide an adequate record on an issue requires that the issue be resolved against the appellant.

(*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; see e.g., *EnPalm, LLC v. Teitler Family Trust* (2008) 162 Cal.App.4th 770, 775 [issue deemed waived where appellant failed to support claim by argument, analysis or citation to the record, or to include any trial proceedings in appellate record].)

Moreover, in measuring the sufficiency of the evidence, the appellate court must review the *entire* record on appeal; it cannot limit its review to isolated bits of evidence asserted by the respondent. (*People v. Johnson* (1980) 26 Cal.3d 557, 577.) In this case, our review of the sufficiency of the evidence is severely hampered because we do not have the record of the trial before the referee. The partial record we do have indicates that each of the parties, their appraisers, at least one surveyor, and unidentified third party witnesses testified at the trial. No doubt the experts and the parties explained the many exhibits that were submitted to the referee, including appraisal reports, surveyor's maps, letters, documents, and the proposals for dividing the property. We shall address the parties' contentions based on the limited record before us, keeping in mind the appellants' burden to provide us with an adequate record for meaningful review.

C. Analysis

The referee's initial report summarized the parties' proposals for dividing the property. In their first proposal, Plaintiffs proposed awarding all of the Home Ranch (including Paul's House) to Plaintiffs and dividing the Corey Hills and Corey Farmland to give Defendants their one-third interest. At the referee's request, they submitted a second proposal that awarded Paul's House to the Defendants, and later they made a third proposal for a different division of the Corey Hills. Defendants' proposal asked the referee to award them Paul's House in its entirety, part of the Upper Hills, part of the Lower Hills, part of the Corey Farmland, and part of the Corey Hills.

After considering the parties' proposals, the referee awarded Paul's House to Plaintiffs and stated: "It is acknowledge[d] that the Defendants were raised in [Paul's

House]. Notwithstanding that fact, none of them now reside there, nor was there any evidence that any of them intends to again reside in that property. It is currently occupied by Michael Moran which has resulted in friction with the Plaintiffs and has the potential of violence. Furthermore, there are issues with respect to the contiguous [Home Farmland] and food safety regulations which could be impacted by the use of the Bull Field and [Paul's House]."

Defendants contest the sufficiency of the evidence to support the referee's findings. They argue that the referee did not consider Defendants' historical use of this property and the fact that they paid the taxes on it. But the referee's findings expressly acknowledged that Defendants were raised in Paul's House. And while it was undisputed that they paid the taxes on Paul's House, they did not pay taxes for other portions of the properties in which they held an interest.

Defendants argue that the referee's reference to "friction" with Michael is ambiguous, that the referee did not tell the court what he meant by that, that there was no evidence that Michael was violent or ever misused a firearm, or that Michael's presence at Paul's House could lead to contamination of crops on the Home Farmland, and that Plaintiffs did not clarify these "vague and ambiguous attacks" on Michael.

The limited record before us contains evidence that supports the referee's findings. In June 2006, an attorney representing David and Pedrazzi Farms wrote a letter to Defendants complaining about an incident that occurred on June 8, 2006 in which Michael and "several accomplices took shooting practice" on a field on the Home Farmland. "Directly in the line of fire, about 1800 feet away, four employees of Pedrazzi Farms were working" in another field; the workers reported that "over 20 shots were fired in a short period of time," and that the shooting placed them "in immediate danger and prevented them from continuing their job that evening." Some of the workers were so "scared," they threatened to quit. Later that day, Michael and his friends "drove various vehicles recklessly over and across" the farm roads on the Home Farmland. The letter

complained of prior "confrontations" between Michael and the harvesting crews on the Home Farmland, and "several incidents of firearm-related vandalism . . . , including the shooting of aluminum sprinkler pipe" and a pump house. David's attorney reminded Defendants that a county ordinance prohibited discharging a firearm along the Salinas River, including on the Home Farmland; asked them to take affirmative steps to prevent further problems; and threatened to contact the sheriff if Michael ever discharged a firearm on the Home Ranch again.⁹

In their answers to interrogatories, Defendants stated that Michael "often wears a holstered gun" at Paul's House and described two incidents involving confrontations with Pedrazzi Farms workers in which Michael wore his gun.

In May 2008, Tanimura and Antle Farming Company (T&A), which leased three blocks of land on the Home Farmland, sent a letter to David complaining about three incidents involving the tenant in Paul's House. In May 2005, while an ice cream vendor was selling ice cream to T&A's crew, the tenant came out of Paul's House with a pistol and "yelled and threatened the vendor" and the crew. In September 2007, the tenant drove his car over two of T&A's fields causing "lost crop and lost profit." In May 2008, while T&A employees were showing their crops to "very important" customers, the tenant came out of Paul's House with a pistol on his hip, which "scared and intimidated" the customers and T&A's employees. As a result of these incidents, T&A informed David that it no longer wished to lease the three blocks on the Home Farmland.

Thus, there was substantial evidence that Michael's presence at Paul's House caused friction with persons who used the surrounding farmland and that there was a potential for violence.

At the hearing on the motion to confirm, the referee told the court that as the evidence evolved, it became clear that allowing Defendants to own property within the

⁹ This letter was in the exhibits submitted by both Plaintiffs and Defendants.

Home Farmland "was not a situation at a whole bunch of levels that should be continued." The referee clarified what he meant by "contamination" relating to Paul's House and the Bull Field and explained that there are substantial issues relating to water, wells, ingress and egress (easements), and the movement of cattle. Maps in the record support the conclusion that awarding Paul's House to Defendants would require easements for ingress and egress over properties awarded to Plaintiffs, since it is surrounded by Home Farmland and the Bull Field.

Defendants also complain that the referee's recommendation "did not expressly put a value on" Paul's House. In 2004, Plaintiffs' appraiser had valued Paul's House and the Bull Field at \$566,000. In 2008, Defendants' appraiser had appraised the Bull Field at \$550,000, but did not appraise Paul's House. As noted before, the referee asked the appraisers to reappraise those two properties. In 2009, the appraisers collaborated and came up with a value of \$950,000 for both parcels. Defendants' Supplemental Exhibit 20, a spreadsheet prepared by Defendants, indicates that the referee valued Paul's House and the Bull Field at \$950,000 and assigned the higher value to Plaintiffs when dividing the properties as a whole. Although the referee did not make an express finding regarding the value of Paul's House alone, Defendants clearly were not prejudiced by that fact.

On this record, we conclude that the trial court did not abuse its discretion when it confirmed the referee's recommendation regarding Paul's House, because there was sufficient evidence that supported the referee's findings.

Upper Hills & Lower Hills

Defendants contend that the trial court abused its discretion when it confirmed the referee's reports, because the recreational easement in gross the referee awarded to them in the Upper Hills is illusory, in part because they have no access to the easement. Plaintiffs assert that Defendants forfeited this point by failing to raise it in the trial court.

Moreover, Plaintiffs have interpreted the referee's award of a recreational easement on the Upper Hills as "necessarily [implying] access via [the] Lower Hills because that is where the access road is located." We begin by addressing the question of forfeiture.

A. Forfeiture

Defendants do not respond to Plaintiffs' contention that they forfeited this argument by failing to raise it in the trial court. As we have explained, to raise an issue on appeal, the appellant must ordinarily object on the same basis in the trial court. (*K.C.*, *supra*, 171 Cal.App.4th at pp. 948-950.)

Defendants did not raise any objection related to the recreational easement in their written opposition to the motion to confirm; they did not argue that the easement was illusory or complain of a lack of access to the Upper Hills. And although there was some discussion of the easement at the hearing before the trial court, Defendants did not raise any objection at that time. Plaintiffs' counsel told the court that when Plaintiffs objected to the recreational easement, the referee rejected their view and asked Plaintiffs' appraiser (Piini) to come up with a dollar value of the degree to which such an easement might diminish the value of the Upper Hills to Plaintiffs. When Piini opined that the easement reduced the value of the property by \$300,000, the referee rejected his opinion and did not assign a dollar value to the easement. The referee told the court he did not accept Piini's analysis because, based on Defendants' age and the type of people they were, he concluded that the easement would not have a chilling effect on potential buyers. When the court asked the referee what kind of uses he envisioned for the easement, the referee said Ella used the property for picnicking and Milton had used it to hunt, picnic, and hike.

Based on this record, we conclude that Defendants have forfeited any claim of error related to the recreational easement. Unlike their claim about Paul's House, Defendants do not assert insufficiency of the evidence related to the easement.

B. Further Analysis

Even if we were to address this claim on the merits, we would find no abuse of discretion.

First, Defendants argue that the only attachment Plaintiffs have to the Upper Hills and the Lower Hills is Loren's use of Loren's House, and since the Home Ranch hillside parcels cover more than three square miles, there was no substantial evidence warranting the award of so much contiguous land to Plaintiffs. However, at all times Plaintiffs owned an undivided two-thirds interest in both properties. In addition, the two houses on the Lower Hills (Loren's House and Spike's House) were historically used by Plaintiffs' ancestors: Enos and Alfred (Spike) and their families lived in those houses. There was also evidence that Loren and James ran cattle on the Upper Hills or the Lower Hills and Defendants told the court that Plaintiffs had used the barns and outbuildings on the Lower Hills to the exclusion of Defendants for 10 years. Finally, David owns a large property adjacent to the Upper Hills. In the face of this evidence, it is rather disingenuous for Defendants to argue that Plaintiffs' only connection to these parcels was Loren's House.

Second, Defendants assert that the referee erred because he made the recreational easement personal to Defendants, holding that it could not be bequeathed or transferred to another party, and as a result the easement does not run with the land. However, Defendants do not cite any legal authority that precluded the referee from recognizing their emotional attachment to the Upper Hills by awarding an easement in gross, or any authority that requires that easements awarded in partition actions must run with the land. In the trial court, Defendants conceded that, separate and apart from this easement, they received one-third of the appraised value of the two ranches, approximately one-third of the acreage on the east side of River Road, and one-third of the property on the west side of the road. Since they received their fair share of the property in terms of dollar value

and area, we fail to see what was inequitable about also awarding them a recreational easement for their lifetimes in property that was dear to them.

Third, they argue that they did not automatically acquire a right-of-way through the Lower Hills; the referee had the authority to provide them access through the Lower Hills but failed to do so. As noted, Plaintiffs state that the award of a recreational easement on the Upper Hills "necessarily implied access via Lower Hills because that is where the access road is located." The second interlocutory judgment recognized that further steps must be taken to complete the partition and the court reserved jurisdiction to resolve further issues and disputes. Presumably, those steps include the preparation of a recordable instrument setting forth the terms of the recreational easement. If any disputes over access arise in the preparation of those documents, the parties can return to the trial court to resolve them. Based on Plaintiffs' brief in this court, it appears there is no dispute that Defendants may use the road in the Lower Hills to access the Upper Hills.

For these reasons, we reject Defendants' claim that the recreational easement is illusory.

Other Alleged Discrepancies in the Referee's Reports

Defendants assert that the trial court abused its discretion when it confirmed the referee's reports because of three "other discrepancies." First, regarding the partition of the Corey Farmland, Defendants argue that there were "no maps or legal descriptions of the alleged 'blocks' and *partial 'blocks'* that were awarded, making it unclear exactly what land the referee gave to Plaintiffs and what land he gave to Defendants." Second, they argue that the partition must comply with the Subdivision Map Act, local subdivision and zoning ordinances, and the general plan for the area, and that there was no evidence whether such matters could be satisfied or that the parties could comply with the court's order. Third, Defendants contend that the referee's recommendations were inadequate because some of the properties were not given a value at all and the values assigned to

other properties "defy logic." However, they do not state which properties were not assigned a value. (We have already disposed of the contention that Paul's House was not assigned a value.) Regarding values that allegedly "defy logic," Defendants object that the Corey Farmland was valued at \$40,000 per acre, while the Home Farmland was valued at \$37,500 per acre, "thereby falsely inflating the allotment that Defendants received." They also object to the referee's finding that the encroachment area on the Corey Farmland was worth \$8,000 per acre. We shall address each of these arguments in turn.

A. Sufficiency of Description of Partition of Corey Farmland

Defendants argue that it is unclear which property each party received in the partition of the Corey Farmland because there were "no maps or legal descriptions of the alleged 'blocks' and *partial 'blocks'* that were awarded."

We begin by noting that Defendants did not make this argument in the proceedings below. Since this point is in part a challenge to the sufficiency of the evidence to support the referee's award, we conclude that it has not been forfeited and will address it. (*Tahoe National Bank v. Phillips, supra*, 4 Cal.3d at p. 23, fn. 17.)

Section 873.280 provides that the referee's report "shall include" a "description of the property divided and of the share allotted to each party, along with any recommendation as to owelty." (§ 873.280, subd. (b)(2).) The description required by the statute "must be by metes and bounds, or lots and blocks, or such other method as will enable the precise location of each portion." (Cal. Law Revision Com. Com., 17A West's Ann. Code Civ. Proc. (1980 ed.) foll. § 873.280, p. 538.)

When possible, a judgment will be construed to uphold it. (*California School Employees Assn. v. King City Union Elementary School Dist.* (1981) 116 Cal.App.3d 695, 702 (*CSEA*).) Uncertainties or irregularities in the judgment may be eliminated or resolved by reference to the record, including the pleadings. (7 Witkin, Cal. Procedure

(2008) Judgment, § 42, p. 580, citing *Watson v. Lawson* (1913) 166 Cal. 235, 241 and other cases.)

In his first report, the referee found that the Corey Farmland was worth \$40,000 per acre, suggested the parties "submit proposed divisions" of the Corey Farmland, and determined that in any division, Defendants would receive the west end of the property.

Thereafter, the parties submitted several proposed scenarios for dividing the Corey Farmland. (See Plaintiffs' Exhibits 17, 21, 24, 25, 30 & Defendants' Supplemental Exhibits 1, 9.) There were two main types of land at issue in the Corey Farmland: (1) the irrigated farmland, which was leased to Bengard, and (2) the undeveloped land along the river, which the surveyors referred to as the "Lower Bench Farmland" and the referee called the "Benchlands." In his supplemental report, the referee recommended that the irrigated farmland be divided pursuant to the proposal in Plaintiffs' Exhibit 30 (which he attached to his report) and that the Benchlands be divided according to the proposal in Plaintiffs' Exhibit 33, with the modifications set forth in his report.

Plaintiffs submitted four different proposals for dividing the irrigated farmland. (See Plaintiffs' Exhibits 21, 24, 25, & 30.) Plaintiffs' proposals divided the property into 22 "farming blocks," based on the actual blocks of land used by Bengard to farm the property. Their proposals listed the number of acres in each block and used an indexing system by which certain blocks were valued at 85 percent of the rest of the blocks. Plaintiffs' exhibits included copies of aerial photographs of the Corey Farmland that showed the patchwork of blocks with lines superimposed on them showing the different proposed divisions. Some of the exhibits contained a line drawing (done to scale) dated November 2003, which appears to be a field map used by Bengard (hereafter block map). The block map shows the location of each numbered block within the property, indicates the size of each block in terms of acreage, and contains some measurements for each block, showing the width or the length of the block in feet. The block map also shows

the locations of the wells, four types of irrigation valves, vacuum breakers, power poles, an irrigation ditch, River Road, and most of the property lines.

Defendants' proposals for dividing the Corey Farmland were based on surveyors' maps prepared by Salinas Valley Surveyors in November 2009 and March 2010. Plaintiffs also submitted surveyors' maps of the Corey Farmland prepared by Steinbeck County Surveys in March and April 2010 in support of their proposed division of the Benchlands.¹⁰ According to the surveyors' maps, the Corey Farmland consists of 13 distinct parcels, which are numbered 65-66, 71-76, and 99-103. (The parcels are different in size and shape from the blocks on the block map.)

The referee relied on the block map to divide the irrigated farmland. He gave Plaintiffs eight blocks on the eastern side of the property, gave Defendants 13 blocks on the western side, and split block No. 5, with 6.32 acres on the east side of that block going to Plaintiffs and 3.63 acres on the west side going to Defendants. This was a reasonable approach, since the block map reflects the conditions on the ground as farmed by Bengard and reference to the blocks meets the requirements of section 873.280 set forth above.

While some of Plaintiffs' proposals included copies of the block map, Plaintiffs' Exhibit 30, which the referee refers to in his supplemental report, does not. But the fact that Exhibit 30 does not contain a copy of the block map does not make the referee's decision uncertain. There was only one block map. It was attached to three of Plaintiffs' proposals and Defendants attached an annotated copy of it to one of their exhibits. Given the existence of the block map, the fact that Plaintiffs' Exhibit 30 refers to the blocks on the map, the level of detail on the block map, the division of the property along block lines, and the precision with which the referee divided block No. 5, we conclude that

¹⁰ Since Defendants' argument refers only to the " 'blocks' *and partial 'blocks'* that were awarded," we conclude that they are satisfied that the division of the Benchlands, which was based on surveyors' maps, was sufficiently certain.

there is absolutely no merit to Defendants' contention that the judgment is void because there were no maps or legal descriptions of the blocks that were awarded.

Defendants also argue that the referee's report is uncertain because, although the report mentions Plaintiffs' Exhibit 30, the referee did not incorporate the exhibit into his report by reference. Since "we are obliged to resolve any uncertain[ies] ' 'so as to support the judgment rather than to defeat it" ' ' (CSEA, *supra*, 116 Cal.App.3d at p. 702) and may rely on the record to do so, we conclude that this argument is meritless.

B. Ability to Meet Land Use Regulations

Defendants argue that the judgment must be reversed because there was no evidence that the proposed partition will satisfy the Subdivision Map Act, the Monterey County General Plan, or local land use regulations.

Again Defendants failed to raise these issues in the trial court. Unlike some of their other claims, this claim of error cannot be interpreted as challenging the sufficiency of the evidence to support the referee's findings and the court's judgment. In his report the referee stated, "No evidence has been submitted by the parties with respect to whether the various proposals of property division would require land use processing to comply with the California Subdivision Map Act." Thus, the referee made no findings regarding these issues. We therefore conclude that any claim of error related to this issue has been forfeited for the purpose of this appeal.

The parties anticipated that one or more parcels would have to be divided to complete the partition. Initially, Defendants asked the referee to partition "each parcel" in kind. And in opposition to the motion to confirm, Defendants proposed a partition that awarded them part of the Upper Hills and most, but not all, of the Lower Hills. Plaintiffs' counsel told the court that "further mapping will have to be done" when the partitioned parcels are submitted to the county for creation. Since the court has retained jurisdiction

"to resolve further issues and disputes that may arise in completion of the partition," it appears that review of these issues may also be premature.

For these reasons, we reject this claim of error.

C. Objections Related to Land Value

Defendants object that the Corey Farmland (a portion of which was assigned to them) was valued at \$40,000 per acre, while the Home Farmland (which was assigned to Plaintiffs) was valued at \$37,500 per acre, "thereby falsely inflating the allotment that Defendants received." They also object to the referee's finding that the 6.7-acre encroachment area on the Corey Farmland was worth \$8,000 per acre (one-fifth of the value of the other Corey Farmland), arguing that the land was worthless because there was no vehicular access to this "narrow sliver of land between a drainage ditch and the property line" and it would be too costly to move the ditch.

As we have explained, to challenge the court's findings on appeal, the appellant must provide this court with an adequate record demonstrating the alleged error. (*Maria P. v. Riles, supra*, 43 Cal.3d at p. 1295.) Plaintiffs assert that the referee's findings regarding the value of these properties were based on the testimony of Defendants' own expert, Mr. Brigantino. However, the reporter's transcript of the experts' trial testimony regarding property values is not in the record on appeal. We do have Brigantino's appraisal reports, in which he stated that the Corey Farmland was worth \$11.8 million and the Home Farmland was worth \$6.19 million. We have the appraisal reports from Mr. Piini (Plaintiffs' appraiser), who appraised these two properties at lesser amounts: \$10,850,000 and \$5,590,000 respectively. We know that both tracts of land contained usable, irrigated farmland and undeveloped areas. But we do not have any testimony describing how the appraisers translated their overall evaluations into a value per acre. Defendants' failure to provide this court with an adequate record to evaluate this issue

requires that the issue be resolved against them.¹¹ (*Ibid.*) Moreover, the referee told the court that "the only numbers that . . . there was any dispute over was the [6.7 acre encroachment area] on the Corey Farm. Everything else was agreed to between Brigantino and Piini And where there was a dispute, such as [Paul's House and the Bull Field, he] had them get together and they came up with a joint recommendation." He also stated that other than the encroachment area "every other number was stipulated to." Defendants did not challenge those representations in the trial court.

Regarding the encroachment area, the exhibits in the record demonstrate that while the encroachment area is cut off from the rest of the Corey Farmland by a drainage ditch, it is contiguous to neighboring farmland owned by Driscoll, which suggests that it could be leased to the parties who own or farm the land next door. The referee told the court that the neighboring parcel was leased out for farming and that the appraiser had testified that "there is a darn good chance that the contiguous property [owner] would want to either lease or buy" the encroachment area. Plaintiffs' counsel told the court that Piini had said the encroachment area was worth 20 percent of the value of the rest of the Corey Farmland. Thus, the record contains substantial evidence that supports the referee's finding that the encroachment area was worth \$8,000 per acre.

¹¹ The appellant's burden on appeal also includes the obligation to present reasoned argument and citations to legal authority on each point raised. " 'If none is furnished on a particular point, the court may treat it as waived and pass it without consideration.' " (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) In addition, any statement in a brief concerning matters that are in the appellate record, whether in the statement of facts, the procedural history, or the argument portion of the brief, must be supported by a citation to the record. (Cal. Rules of Court, rule 14(a)(1)(C); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29-30.) Here, Defendants make the bald assertion that the partition was inequitable because the Corey Farmland was valued at \$37,500 per acre while the Home Farmland was valued at \$40,000 per acre, without citation to the record, without discussing the evidence on point, without presenting reasoned argument or citation to authority, and without providing an adequate record to permit review of the issue. This is insufficient to meet their burden on appeal.

For these reasons, we reject each of Defendants' contentions on appeal and conclude that the trial court did not abuse its discretion when it confirmed the referee's report.

CROSS-APPEAL

Plaintiffs' cross-appeal challenges the portion of the judgment denying their request for an order directing Defendants to pay a portion of the property taxes.

Facts Relating to Cross-Appeal

After Paul died in 1996, Plaintiffs paid all of the property taxes on the Corey Hills, Upper Hills, and Lower Hills (hereafter jointly "hillside properties"). Plaintiffs claimed that Defendants had not paid their proportionate share of the taxes, that Plaintiffs were entitled to reimbursement from Defendants for one-third of the property taxes they had paid on the hillside properties from 1996 through 2010, and that Defendants owed them \$25,229.44. At trial, Ella admitted that Defendants did not pay any taxes on the hillside properties after 1996.

The custom and practice regarding farmland in the Salinas Valley is that the tenant pays the property taxes. After Debra's mother died, the county sent Plaintiffs a supplemental tax bill on the Corey Farmland for tax years 2004 through 2007. By the time Plaintiffs received the supplemental tax bill, the tenant who had farmed the Corey Farmland during that time was gone and a new tenant was farming the land. David testified that the supplemental tax bill was "four years late [in] getting to" Plaintiffs and that they did not submit that bill to the prior tenant for payment. In October 2010, the supplemental tax bill remained unpaid; the amount due, including interest and penalties, was \$25,557. Plaintiffs sought to recover one-third of the supplemental tax bill from Defendants.

The referee concluded that there was insufficient evidence to make a recommendation on the taxes. The court took evidence on the issue and found that the \$25,557 due in supplemental taxes was Debra's responsibility. It also denied Plaintiffs' request for reimbursement of back taxes paid on the hillside properties, finding the evidence "inconclusive."

Analysis

Plaintiffs argue that they are entitled to reimbursement for the taxes they paid for the common benefit of all the co-tenants. They argue they are entitled to contribution regardless of their intent in paying the taxes and Defendants' intent or conduct in failing to pay their proportionate share of the taxes. In our view, substantial evidence supports the trial court's conclusions and its equitable solution of the property tax issues.

Milton testified that there was an "unspoken" agreement that Defendants would not have to contribute toward the taxes in exchange for various uses Plaintiffs made of the property. David denied that there was such an agreement. Although David's father collected \$1,500 per month in rent on Spike's house, the parties did not use that income to pay taxes. They did not collect rent from Loren, but he paid for the increase in the property taxes due to his renovation of Loren's House. David told the court that his mother had attempted to collect a portion of the taxes from Defendants before she passed away, but he could not recall the last time Plaintiffs made a demand on Defendants to pay their proportionate share of the taxes.

Milton testified that eight or nine years before, he had raised the property taxes issue, prepared a chart setting forth his view of what was fair, and presented it to the family. There was no action on his proposal. Although Defendants used Paul's House without paying rent, they also paid the property taxes on that parcel. Since David was using the shops and barns on the Lower Hills for his farming operation and not paying rent for that, and Plaintiffs were collecting the rent on Spike's house and "paying no one

for that," the consensus was "that was a wash for the taxes." Milton also testified that after the Salinas River flooded in 1995, each side paid its share of the cost of the reclamation work done on the Home Farmland. After the reclamation, additional acreage became available for farming on the Home Farmland. However, David never paid rent for the use of that acreage. Defendants considered the unpaid rent another offset against Plaintiffs' property tax claim. After the land was surveyed for this litigation, Defendants discovered that the reclaimed land totaled nine acres. When the referee resolved the unpaid rents issue, he decided not to award arrearages prior to 2007, finding that the parties had "mutually erred [regarding] the amount of acreage and have operated on that basis for a sufficient period of time that any re-computation [was] not warranted." Similarly, the evidence supported the conclusion that the parties had had an arrangement going back to 1996 under which Plaintiffs paid the property taxes on the hillside properties in exchange for their use of the barns, the houses, and other facilities on those properties. In our view, this evidence supports the trial court's conclusions with regard to Plaintiffs' claim for back taxes in the amount of \$25,229.44.

When David first received the supplemental tax bill, he thought it might be Debra's responsibility; the bill was based on the increase in the value of the property after Debra's mother died. Milton testified that the October 2010 hearing was the first time he had heard about the supplemental tax bill. The supplemental tax bills indicated that Plaintiffs had notice of this tax liability as early as July 2008. Of the \$25,557 due on the supplemental tax bill, \$2,023.64 was for penalties and costs and \$4,086.70 was for interest and fees.

In the exercise of its equitable discretion, the court reasonably concluded that Plaintiffs were responsible for the supplemental tax bill in its entirety since (1) they had never sought reimbursement from the former tenant or Defendants, (2) they did not pay the bill when first received, incurring substantial interest and penalties, (3) there was evidence that the parties had operated under an agreement whereby Plaintiffs paid the

property taxes on the hillside properties in exchange for other uses they made of those properties, and (4) the trial court's decision was consistent with the referee's decision on the rent arrearages, maintaining the status quo through 2007.

For all these reasons, we conclude that the court did not abuse its discretion when it ruled on Plaintiffs' claims regarding the property taxes on the hillside properties and the supplemental property tax bill on the Corey Farmland.

DISPOSITION

The judgment of partition is affirmed. Each side shall bear its own costs on appeal.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.